

**IN THE HIGH COURT OF TANZANIA**

**(COMMERCIAL DIVISION)**

**AT DAR ES SALAAM**

**COMMERCIAL CASE NO. 37 OF 2015**

**HERTZ TANZANIA LIMITED ..... PLAINTIFF**

**VERSUS**

**MM GOLD LIMITED ..... DEFENDANT**

20<sup>th</sup> & 20<sup>th</sup> October, 2016

**SUMMARY JUDGMENT**

**(Under Order XXXV rule 2 (2) (a) of the Civil Procedure Code, Cap.  
33 of the Revised Edition, 2002)**

**MWAMBEGELE, J.:**

This is a summary judgment. By a Ruling of 14.07.2016, this court dismissed Miscellaneous Commercial Cause No. 118 of 2015 in which the defendant herein had applied for extension of time within which to file an application for leave to appear and defend this summary suit. In view of that ruling, this morning, Mr. Themistocles Rwegasira assisted by Ms. Mary Mosha, the learned counsel for the plaintiff herein, prayed for summary judgment under the provisions of Order XXXV rule 2 (2) (a) of the Civil Procedure Code, Cap. 33 of the Revised Edition, 2002 (the CPC). This is the summary judgment prayed for.

In the plaint, the plaintiff has prayed for:

- a. Payment of overdue amount to the Plaintiff on Vehicle Rental of USD 32,000.00 (United States Dollar, thirty two thousand (equivalent of Tshs. 60,000,000/=);
- b. Payment to the Plaintiff on breach of Contract, tortuous injuries due to frustration in following up overdue payments and business inconvenience caused thereof by the Defendant, amounting to Tanzania Shillings Eighty Million (Tshs. 80,000,000/=) making a total claim sum of equivalent of Tshs. 140,000,000 for the plaintiff;
- c. Payment of General Damages as shall be assessed by the Honourable Court; and
- d. Costs of this Court to be provided for.

The letter of the law is that the defendant's application for extension of time within which to file an application for leave to appear and defend this summary suit having been dismissed, the plaintiff, in terms of Order XXXV rule 2 (2) (a) of the CPC, is entitled to a summary judgment as prayed for in the plaint -- see: ***CRDB Bank Limited Vs John Kagimbo Lwambagaza*** [2002] TLR 117. Accordingly, in terms of Order XXXV rule 2 (2) (a) of the CPC, I enter judgment for the Plaintiff as prayed for in the plaint and, in terms of rule 67 (3) of the High Court (Commercial Division) Procedure Rules, 2012 -- GN No. 250 of 2012, proceed to decree as follows:

1. The Defendant shall pay the plaintiff United States Dollars thirty two thousand (USD 32,000) or its equivalent of Tanzania Shillings sixty Million (Tshs. 60,000,000/=) only;
2. The Defendant shall pay the plaintiff Tanzania Shillings Eighty Million (Tshs. 80,000,000/=) only as business inconvenience caused;

3. The Defendant shall pay the plaintiff Tanzania Shillings Five Million (Tshs. 5,000,000/=) only as general damages; and
4. The Defendant shall pay the plaintiff costs of the suit.

Order accordingly.

DATED at DAR ES SALAAM this 20<sup>th</sup> day of October, 2016.

**J. C. M. MWAMBEGELE**  
**JUDGE**